

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

SOFT SERVE FRUIT CO. LLC,

Plaintiff,

--against --

BC HOSPITALITY GROUP LLC and ESQUARED
HOSPITALITY LLC,

Defendants.

Civil Action No.: 17-cv-9735(ER)

**STIPULATION AND ORDER REGARDING TEMPORARY
RESTRAINING ORDER AND ORDER TO SHOW CAUSE FOR PRELIMINARY
INJUNCTION**

WHEREAS, on December 12, 2017, the Court granted Plaintiff Soft Serve Fruit Co. LLC's ("Plaintiff") application for a temporary restraining order and entered an Order (Docket #3) (the "TRO Order") temporarily enjoining Defendants BC Hospitality Group LLC and ESquared Hospitality LLC (together, "Defendants") from using Defendants' BY CHLOE or CHILL BY CHLOE marks, Plaintiff's CHLOE'S mark, any mark that wholly incorporates CHLOE, or any other name or mark that is confusingly similar to Plaintiff's CHLOE'S mark, or is a derivation or colorable imitation thereof, regardless of whether used alone or with other terms (collectively, "Prohibited Marks") in connection with prepackaged frozen desserts offered to or through grocery stores, supermarkets, online grocery retailers, and other food retailers ("Retail Food Channels") as more fully set forth in the TRO Order, and setting Plaintiff's motion for a preliminary injunction for a hearing on December 27, 2017;

WHEREAS, on December 18, 2017, the Court, pursuant to a stipulation of the parties, adjourned the preliminary injunction hearing until January 31, 2018 (Docket No. 9) and, with Defendants' consent, extended the TRO order through that date;

WHEREAS, on January 3, 2018, the Court, again pursuant to a stipulation of the parties, adjourned Defendants' time to answer the Complaint until January 23, 2018 (Docket No. 19); and

WHEREAS, the parties having conferred and having agreed among themselves to extend the TRO Order and to extend the briefing schedule on Plaintiff's motion for preliminary injunction subject to the Court's review and approval of same;

NOW THEREFORE, the parties stipulate and agree as follows:

1. Pursuant to Federal Rule of Civil Procedure 65(b)(2), Defendants consent to extension of the TRO Order up until the time that the Court renders its decision on Plaintiff's motion for preliminary injunction. The parties agree that all terms of the TRO Order remain in force and effect, and that the bond posted by Plaintiff will remain in place, up until the time that the Court renders its decision on Plaintiff's motion for preliminary injunction.

2. The preliminary injunction hearing will be held on or about April 1, 2018, or thereafter, as the Court may order. The parties have not yet determined whether any of them will seek to present evidence at the preliminary injunction hearing, but will inform the Court sufficiently in advance of the hearing of their preferences.

3. Defendants' brief and all supporting documents in opposition to Plaintiff's motion for preliminary injunction will be filed on or before 5 pm on February 28, 2018, and Plaintiff's reply brief and all supporting documents in further support of its motion for preliminary injunction will be filed on or before 5 pm on March 22, 2018.

4. The parties stipulate to conduct limited discovery as follows:
 - a. The parties may serve a reasonable number of document requests relating to (i) actual confusion; (ii) identification of Retail Food Channels (both actual and attempted); (iii) the creation, selection and adoption of the parties' respective marks at issue; (iv) the parties' actual or proposed expansion into Retail Food Channels, and the dates, geographic regions, and volume of sales relating to such expansion; (v) changes in the format, presentation, display, or elements or content of the parties' respective marks at issue; (vi) advertising and promotion of the parties' marks in connection with Retail Food Channels; and (vii) physical specimens of uses of Plaintiff's mark in connection with Retail Food Channels.
 - b. The parties may seek depositions of declarants/affiants and persons or witnesses identified in the corresponding declarations.
 - c. The parties will negotiate in good faith with regard to the deadline(s) for serving and responding to document requests and for scheduling depositions.
 - d. No party shall require another party to engage in broad electronic discovery, keyword searching, or the like.

5. Upon issuance of the Court's order on this stipulation (regardless of any alterations made by the Court), Defendants shall provide Plaintiff a list of the particular Retail Food Channels (as defined in the TRO Order) with whom Defendants made contact for the purpose of selling frozen desserts under the BY CHLOE and/or CHILL BY CHLOE marks prior to the issuance of the TRO Order. Plaintiff shall not use the list to notify the identified retailers about the existence of the lawsuit or the TRO Order, but may use the list only (a) to verify

Defendants' compliance with the TRO Order, such as by visiting the stores of identified retailers, and (b) conduct reasonable discovery after notice to Defendants. If Plaintiff learns that Defendants are not complying with the TRO Order at a particular retailer, Plaintiff may notify that retailer of the TRO Order. To the extent that any particular Retail Food Channels contact Defendants with respect to the BY CHLOE and/or CHILL BY CHLOE frozen dessert during the pendency of the TRO Order, Defendants shall inform them of the existence and terms of the TRO Order.

6. The parties agree and submit for the Court's approval this [redacted] Order to Continue Temporary Restraining Order and Reset Preliminary Injunction Schedule.

Dated: New York, New York
January 12, 2018

COWAN, LIEBOWITZ & LATMAN, P.C.

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SO ORDERED this 17
day of January, 2018



Edgardo Ramos
United States District Judge